



Religious Action Center
of Reform Judaism

*The Religious Action Center
pursues social justice
and religious liberty
by mobilizing the American Jewish
community and
serving as its advocate
in the nation's capital.*

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The Religious Action Center
operates under the auspices of
the Commission on Social
Action of Reform Judaism, a
joint instrumentality of the
Central Conference of
American Rabbis and the
Union for Reform Judaism with
its affiliates:

American Conference of
Cantors

Association of Reform Zionists
of America

Canadian Association of
Reform Zionists

Early Childhood Educators of
Reform Judaism

National Association of Temple
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The Honorable Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510-3802

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510-4502

Dear Senators Specter and Leahy,

As you consider the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, we write on behalf of the Union for Reform Judaism, encompassing 1.5 million Reform Jews in 900 congregations across North America, to express our opposition to Judge Alito's nomination.

Our decision to oppose Judge Alito's nomination was not taken lightly. During the debate on the nomination at our recent Biennial General Assembly Reform Jews old enough to remember the significant role the Supreme Court played in extending basic human and civil rights to all Americans cautioned the delegates about the danger of a Court whose members have records in opposition to defending those rights. Our Movement's youth spoke of cherished constitutional rights that, with but one Supreme Court justice's vote changing the balance of the court, could be undone, altering their lives and those of the generations to follow. The older members did not want to leave this legacy, and the youth did not want to inherit it.

In 2002, the Union for Reform Judaism adopted a resolution that established our criteria for considering nominees to the federal courts. Under these criteria, which are not limited to issues of character or professional competence, we will oppose a nominee in those rare cases in which after consideration of what the nominee has said and written, and his or her record, a compelling case can be made that the appointment would threaten protection of the most fundamental rights which our Movement supports. Based on these criteria, in November of 2005 we resolved to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States¹ believing that:

¹ Our resolution provides that we will "oppose Judge Alito's nomination as Associate Justice of the Supreme Court of the United States now, based on his extensive record, but will have the Union review that decision at the end of the hearings, with the understanding that if disclosures in the hearings do not reflect substantial changes, the Union will remain in opposition to his nomination." A special leadership committee will be meeting at the conclusion of the hearings to implement the resolution.

•Judge Alito's elevation to the Supreme Court would threaten protection of the most fundamental rights which our Movement supports including, but not limited to, reproductive freedom, the separation between church and state, protection of civil rights and civil liberties, and protection of the environment;

•On choice, women's rights, civil rights, and the scope of federal power (particularly as it relates to civil rights and environmental protection), Judge Alito's nomination has sparked a national debate on one or more issues of core concern to the Reform Movement so that the outcome of the nomination is likely to be perceived as a referendum on that issue and will have significant implications beyond the individual nomination;

•Many of his rulings have been contrary to our core values and differed from the views of Justice Sandra Day O'Connor (who was so often the moderate "swing vote" on a closely divided Supreme Court), and, consequently, Judge Alito's elevation would shift the ideological balance of the Supreme Court on matters of paramount concern to the Reform Movement; and

•Judge Alito's elevation to the Supreme Court would likely contribute significantly to reshaping American jurisprudence in a direction that would jeopardize our core values.

Judge Alito's government service, and especially his fifteen-year record on the 3rd Circuit Court of Appeals, provide clear insight into his judicial philosophy and understanding of the Constitution. His rulings from the bench in many areas of great import to the Reform Movement, and the views he expressed while working at the Department of Justice, demonstrate to us that he should not be confirmed.

As a religious minority, our community has historically been committed to maintaining a strong wall of **separation between church and state**. We see nothing in Judge Alito's background to suggest he shares our commitment. In fact, in his 1985 job application to the Reagan Justice Department, Judge Alito wrote that one of the very reasons he became interested in constitutional law was his "disagreement" with the Warren Court's decisions regarding the Establishment Clause. His opinions as a sitting judge have been consistent with this claim. In *ACLU-NJ v. Schundler*, Judge Alito said it was constitutional to have a holiday display consisting of a crèche (a representation of the infant Jesus in the manger), a menorah, a Christmas tree, and other "secular holiday" displays in front of the entrance to the main city government building. Again evidencing his lack of commitment to Establishment Clause values, in *ACLU of New Jersey v. Black Horse Pike Regional Board of Education*, Judge Alito's dissenting opinion argued that it was constitutional for a public school district to allow prayer at graduation ceremonies. Later, in a similar case involving school prayer the Supreme Court disagreed. The statements in Judge Alito's 1985 job application and the aforementioned cases illustrate his indifference (at best) to the constitutional protections separating church and state; safeguards that have been the linchpin protecting religious liberty for all Americans.

A longtime advocate for women's rights and reproductive choice, the Reform Movement is also deeply concerned by Judge Alito's views on **reproductive rights**. During his time as an attorney in the Solicitor General's office, Judge Alito helped author the Reagan Administration's *amicus* brief in *Thornburgh v. American College of Obstetricians and Gynecologists* which argued for overturning the *Roe v.*

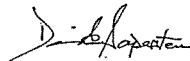
Wade decision. Judge Alito also authored a 17-page memo to the Solicitor General on how to “advance the goals of bringing about the eventual overturning of *Roe v. Wade*...” Further, in his 1985 job application to the Reagan Justice Department he wrote of his work in the Solicitor General’s office saying, “it has been a source of personal satisfaction or me ... to help advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions to recent cases in which the government has argued in the Supreme Court that ... the Constitution does not protect a right to an abortion.” This dedication to the “advancement” of reversing *Roe* is also clearly illustrated by his dissenting opinion in *Casey v. Planned Parenthood* (1991). Judge Alito would have upheld a provision of Pennsylvania’s restrictive anti-abortion law requiring a woman to notify her husband before obtaining an abortion. His colleagues on the Third Circuit disagreed and the Supreme Court overturned the Pennsylvania provision (with Justice O’Connor casting the deciding vote). The Court’s majority opinion found that the provision Judge Alito would have upheld reverted back to the days when “a woman had no legal existence separate from her husband.”

So often our nation’s courts ensure civil rights and civil liberties that are otherwise unprotected by flawed systems and discriminatory actions. In order to continue administering justice and equality for all, individuals with grievances must have access to the courtroom. Here, too, the record suggests that Judge Alito does not share our commitment to this fundamental principle. In split decisions on the merits of claims alleging violations of the civil rights of racial minorities, women, seniors, and people with disabilities, Judge Alito has consistently ruled with the defendants. In 16 of 24 such cases, Judge Alito has voted to deny litigants the right to even bring their suit before the court. For example, in *Bray v. Marriott Hotels*, involving claims of race discrimination, the Court majority sharply criticized Judge Alito’s dissent, stating that his “position would immunize an employer from the reach of Title VII” in certain circumstances. In *Public Interest Research Group v. Magnesium Elektron*, another case involving access to the courtroom, Judge Alito again voted to make it harder for citizens to establish standing to sue, this time concerning toxic emissions that violate the Clean Water Act.

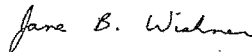
Judges, especially those selected to serve on the highest court in our land, must be committed to upholding our foundational principles of liberty and equality. Judge Alito’s record leaves us with serious doubts as to his ability to safeguard these rights that we as a Movement, and a nation, hold so dear. Here, with the stakes so high – a lifetime appointment to the nation’s highest court, replacing a pivotal Justice who was often the “swing vote” in key areas – we cannot afford such doubts.

We, therefore, urge you to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, and we stand ready to discuss our concerns with you or your staff in greater detail.

Respectfully,



Rabbi David Saperstein
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Of Reform Judaism



Jane Wishner
Chair, Commission on Social Action
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